

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

OLIVIA Y., *et al.*

PLAINTIFFS

v.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi, *et al.*

DEFENDANTS

**PLAINTIFFS' MOTION FOR FINAL APPROVAL OF MISSISSIPPI
SETTLEMENT AGREEMENT AND REFORM PLAN**

Plaintiffs move this Court pursuant to Federal Rule of Civil Procedure 23(e) for final approval of the parties' Settlement Agreement and Reform Plan, which this Court preliminarily approved by Order dated November 8, 2007. A true and correct copy of the proposed Mississippi Settlement Agreement and Reform Plan is attached as Exhibit 1.

1. On March 11, 2005, the Court certified this case seeking declaratory and injunctive relief for class action treatment pursuant to Federal Rule of Civil Procedure 23(b)(2). (Docket No. 84.) The proposed settlement resolves this litigation and provides a detailed, court-enforceable remedial plan. As the proposed settlement contemplates class-wide relief, Rule 23(e)(2) requires that the Court approve the agreement only if, after a hearing, the Court concludes that the terms of the settlement are "fair, reasonable, and adequate" from the perspective of absent class members. *See Ayers v. Thompson*, 358 F.3d 356, 368-69 (5th Cir. 2004) (listing factors that guide approval of class action settlements).

2. On November 8, 2007, the Court granted preliminary approval of the proposed settlement and directed Defendants to provide notice to Class members and other interested persons. (Docket No. 439) (order attached hereto as Ex. 2). As evidenced by the certification filed with the Court on December 4, 2007, Defendants have complied with the Court's direction regarding notice. (Docket No. 440) (attached hereto as Ex. 3). The distribution of notice is further evidenced by the letters submitted on behalf of interested parties that were filed with the Court in accordance with the directions set forth in the class notice (attached collectively as Ex. 4)¹ and the numerous calls received by Plaintiffs' Counsel in response to the notice (*see* Kraemer Aff., attached hereto as Ex. 5). The requirements of Rule 23(e)(1) have thereby been satisfied.
3. The proposed settlement follows over three years of litigation that involved extensive discovery, two motions to dismiss, and cross-motions for summary judgment. The proposed settlement was reached only after the denial of those cross-motions, a partial settlement as to liability, and over six months of arm's-length negotiations facilitated by a court-appointed mediator. The vigorous manner in which the parties litigated this case and the time and effort involved in reaching the proposed settlement amply demonstrate the absence of fraud or collusion between the parties in reaching this agreement.

¹ Excluded from this compilation is Exhibit 4 to the letter filed by George Whitten, Jr., on December 18, 2007. This exhibit has been sealed by order of the Court pending a decision on Defendants' Emergency Motion to Seal the Court Record. (Docket Nos. 448, 449.)

4. The projected trial as to remedy would have been expensive and, assuming an appeal, the proceedings would have been extremely time-consuming. The litigation has reached a stage where both parties and this Court are well positioned to evaluate the terms of the proposed agreement. While Defendants previously conceded liability, securing a remedial order at trial or on appeal that is equal in breadth to the proposed settlement was in no manner preordained, and the cost, time, and possible risk of litigation all weigh in favor of the proposed settlement, which also provides immediate relief for the Class.
5. The relief obtained in the proposed settlement is extraordinarily comprehensive, detailed, and favorable to Class members. Class Counsel, all of whom have substantial experience litigating complex federal class actions, strongly support the proposed settlement. All of the letters submitted in response to the class notice recognize a need to reform Mississippi's foster care system, and they are overwhelmingly in favor of the proposed Mississippi Settlement Agreement and Reform Plan as the means of resolving the litigation and achieving that necessary reform. The one objection submitted in response to the notice is not from a Class member and reflects both mischaracterizations and misunderstandings of the terms of the proposed settlement. Not a single Class member has asserted that the proposed settlement fails to satisfy the requirements for approval as specified in Rule 23(e)(1)-(2). The proposed settlement is fair, reasonable, and adequate.

WHEREFORE, Plaintiffs move that the Court, after conducting the hearing required by Federal Rule of Civil Procedure 23(e)(2), enter its findings and conclusions in approval, grant its approval, and enter the proposed Mississippi Settlement Agreement and Reform Plan Agreement as an order of the Court.

Respectfully submitted, this 20th day of December, 2007.

/s Eric Thompson

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PLAINTIFFS' COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2007, I electronically filed the foregoing Plaintiffs' Motion for Final Approval of Mississippi Settlement Agreement and Reform Plan with the Court using the ECF system, which sent notification of such filing to the following:

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